



NSW Department of Planning & Environment

16 November 2023

**Ref No:** F2004/08420

Dear Sir/Madam,

**Re: EIE for outdoor dining on private land and optional LEP clause for live music venues**

Thank you for the opportunity to comment on the above *Explanation of Intended Effect* (EIE), which outlines:

- Amendments to the *SEPP Exempt and Complying Development Codes 2008* to permit outdoor dining on private land and at registered clubs; and
- Amendments to the Standard LEP Instrument to include an optional floor space bonus provision for new developments which incorporate music venues.

In recent years Council has embarked on several measures and programs to support the local economy, recognising the socio-economic benefits of stimulating job creation and economic growth within the Local Government Area. For instance, Council has been proactive in encouraging outdoor dining in our local area and is currently running the “Randwick Alfresco Program”, providing support for businesses to plan, operate, maintain and increase dining areas on roads and public spaces.

Similarly, Council’s work on the night time economy has identified a number of initiatives to support the creative and live music sectors, and to enhance diversification of offerings and encourage wider community participation. This work has culminated in recently gazetted LEP amendments which amongst many things, make it easier for small scale cultural activities to take place and for low impact businesses to stay open later.

The latest suite of proposed amendments to the State Government policy framework generally aligns with Council’s objectives for supporting the hospitality and live music and creative sectors and are generally supported, provided residential amenity impacts are capable of being appropriately managed. To this end, the following comments are made with respect to the changes proposed to existing legislation:

***Outdoor Dining Approved as Complying Development***

As noted above, the EIE proposes to permanently relax the rules for outdoor dining, by amending the *Exempt and Complying Codes SEPP* to allow food and drink premises and registered clubs to permit outdoor dining on private land under the Complying Development pathway. Although the intent of the proposed changes are well understood and supported, there are concerns that the suggested Complying Development provisions may be too generous and are likely to result in noise complaints from residents in certain locations. Furthermore, concerns are raised that residential amenity may not be adequately protected as suggested in the EIE, particularly when it comes to

<p><b>English</b></p> <p>If you need help to understand this letter, please come to Council's Customer Service Centre and ask for assistance in your language or you can contact the Telephone Interpreter Service (TIS) on 131 450 and ask them to contact Council on 1300 722 542.</p>	<p><b>Greek</b></p> <p>Αν χρειάζεστε βοήθεια για να καταλάβετε αυτή την επιστολή, παρακαλείστε να έρθετε στο Κέντρο Εξυπηρέτησης Πελατών της Δημαρχίας (Council Customer Service Centre) και να ζητήσετε βοήθεια στη γλώσσα σας ή τηλεφωνήστε στην Τηλεφωνική Υπηρεσία Διερμηνέων (Telephone Interpreter Service — TIS) τηλ. 131 450 και να ζητήσετε να επικοινωνήσουν με τη Δημαρχία τηλ. 1300 722 542.</p>	<p><b>Italian</b></p> <p>Se avete bisogno di aiuto per capire il contenuto di questa lettera, recatevi presso il Customer Service Centre del Municipio dove potrete chiedere di essere assistiti nella vostra lingua; oppure mettetevi in contatto con il Servizio Telefonico Interpreti (TIS) al 131 450 e chiedete loro di mettersi in contatto col Municipio al 1300 722 542.</p>
<p><b>Croatian</b></p> <p>Ako vam je potrebna pomoć da biste razumjeli ovo pismo, molimo dođite u Općinski uslužni centar za klijente (Council's Customer Service Centre) i zatražite pomoć na svom jeziku, ili možete nazvati Telefonsku službu tumača (TIS) na 131 450 i zamoliti njih da nazovu Općinu na 1300 722 542.</p>	<p><b>Spanish</b></p> <p>A la persona que necesite ayuda para entender esta carta se le ruega venir al Centro de Servicios para Clientes [Customer Service Centre] de la Municipalidad y pedir asistencia en su propio idioma, o bien ponerse en contacto con el Servicio Telefónico de Intérpretes ["TIS"], número 131 450, para pedir que le comuniquen con la Municipalidad, cuyo teléfono es 1300 722 542.</p>	<p><b>Vietnamese</b></p> <p>Nếu quý vị không hiểu lá thư này và cần sự giúp đỡ, mời quý vị đến Trung Tâm Dịch Vụ Hướng Dẫn Khách Hàng của Hội Đồng Thành Phố (Council's Customer Service Centre) để có người nói ngôn ngữ của quý vị giúp hay quý vị có thể liên lạc Dịch Vụ Thông Dịch qua Điện Thoại (TIS) ở số 131 450 và yêu cầu họ liên lạc với Hội Đồng Thành Phố (Council) ở số 1300 722 542.</p>
<p><b>Polish</b></p> <p>Jeśli potrzebujesz pomocy w zrozumieniu treści tego pisma, przyjdź do punktu obsługi klientów (Customer Service Centre) przy Radzie Miejskiej i poproś o pomoc w języku polskim, albo zadzwoń do Telefonicznego Biura Tłumaczy (Telephone Interpreter Service — TIS) pod numer 131 450 i poproś o skontaktowanie się z Radą Miejską (Council) pod numerem 1300 722 542.</p>	<p><b>Indonesian</b></p> <p>Jika Anda memerlukan bantuan untuk memahami surat ini, silakan datang ke Pusat Pelayanan Pelanggan (Customer Service Centre) Pemerintah Kotamadya (Council) dan mintalah untuk bantuan dalam bahasa Anda, atau Anda dapat menghubungi Jasa Juru Bahasa Telepon (Telephone Interpreter Service - TIS) pada nomor 131 450 dan meminta supaya mereka menghubungi Pemerintah Kotamadya pada nomor 1300 722 542.</p>	<p><b>Turkish</b></p> <p>Bu mektubu anlamak için yardima ihtiyaciniz varsa, lütfen Belediye'nin Müşteri Hizmetleri Merkezi'ne gelip kendi dilinizde yardım isteyiniz veya 131 450'den Telefonla Tercüme Servisi'ni (TIS) arayarak onlardan 1300 722 542 numaradan Belediye ile ilişkiye geçmelerini isteyiniz.</p>
<p><b>Hungarian</b></p> <p>Amennyiben a levél tartalmát nem érti és segítségre van szüksége, kérjük látogassa meg a Tanácsház Ügyfél Szolgálatát (Customer Service Centre), ahol magyar nyelven kaphat felvilágosítást, vagy hívja a Telefon Tolmacs Szolgálatot (TIS) a 131 450 telefonszámon és kérje, hogy kapcsolják a Tanácsházat a 1300 722 542 telefonszámon.</p>	<p><b>Czech</b></p> <p>Jestliže potřebujete pomoc při porozumění tohoto dopisu, navštivte prosím naše Středisko služeb pro veřejnost (Council's Customer Service Centre) a požádejte o poskytnutí pomoci ve vaší řeči anebo zavolejte Telefonní tluumočnickou službu (TIS) na tel. číslo 131 450 a požádejte je, aby oni zavolali Městský úřad Randwick na tel. číslo 1300 722 542.</p>	<p><b>Arabic</b></p> <p>إذا أردت مُساعدة لفهم هذه الرسالة، نرجوك الحضور إلى مركز خدمة عملاء المجلس واطلب المساعدة في لغتك، أو يُمكنك الاتصال بخدمة الترجمة الهاتفية (TIS) على هاتف رقم 131 450 واطلب منهم الاتصال بالمجلس على رقم 1300 722 542.</p>
<p><b>Chinese</b></p> <p>如果你需要人幫助你了解這封信的內容，請來市政會顧客服務中心要求翻譯服務，或者與電話傳譯服務 (TIS) 聯繫，號碼是 131 450。請他們幫助你打電話給市政會，號碼是 1300 722 542。</p>	<p><b>Russian</b></p> <p>Если Вам требуется помощь, чтобы разобраться в этом письме, то, пожалуйста, обратитесь в Муниципальный Центр Обслуживания Клиентов и попросите оказать Вам помощь на Вашем языке или же Вы можете позвонить в Телефонную Службу Переводчиков (TIS) по номеру 131 450 и попросить их связаться с Муниципалитетом по номеру 1300 722 542.</p>	<p><b>Serbian</b></p> <p>Ako vam treba pomoć da razumete ovo pismo, molimo vas da dođete do Centra za usluge mušterijama pri Opštini (Customer Service Centre) i zamolite ih da vam pomognu na vašem jeziku, ili možete nazvati Telefonsku prevodilačku službu (TIS) na 131 450 i zamolite ih da vas povežu sa Opštinom na 1300 722 542.</p>

noise from patrons and any associated background or live music (especially if there is a dwelling or apartments nearby). In particular the following concerns/issues are raised:

- The proposed provisions do not contain distance/buffer zone requirements from a residential use which is concerning given the potential for noise impacts on residential neighbourhoods and/or residential premises that are located adjacent to the affected food and drink premises/registered club. This issue would be further exacerbated by food and drink premises/registered clubs which are located within a residential zone which may take up the proposed outdoor dining provisions;
- It is noted that there is no limit on patron numbers for the outdoor dining component of an affected premises. Attempting to control the number of patrons in an outdoor area via the Building Code of Australia (BCA) (such as via toilet facility requirements) is fraught with difficulty as the BCA applies to new building work, and not the use of outdoor areas in those circumstances where new work is not proposed;
- The 50% floor area criteria is overly generous and would result in the conversion of an outdoor area of a licensed premises to potentially hundreds of m<sup>2</sup> if no physical work was proposed that would otherwise trigger the development consent process. This would have long standing impacts on residential amenity through additional noise; and
- Concerns are raised about the lack of limits to trading hours (other than requirements to be consistent with the approved trading hours for the existing premises). There are several instances of premises whose historical consents do not stipulate trading hours, or may be permitted to open later than the DCP late night trading provisions (such as certain licensed premises in Randwick City). Permitting outdoor dining in such larger premises may give rise to amenity issues for residents in the vicinity.

Should there be adequate and effective development standards applied with a clear focus on protecting residential amenity, the proposed development pathway for outdoor dining on private land could be recategorized as Exempt Development. However, if the premises is unable to meet the general Exempt criteria (e.g. does not have lawful fire safety schedule for the building for instance), then the provisions can be duplicated as Complying Development and modified to suit.

### ***Optional Floor Space Bonus for Music Venues***

The EIE proposes a new optional LEP model provision allowing councils to permit a floor space bonus if a development includes a creative industry, entertainment facility or information and education facility (covering galleries). The onus is on councils to develop specific criteria and numerical standards for the developments that the clause would apply to. For example, councils would determine if the bonus is available in certain areas such as Special Entertainment Precincts, in or around transport nodes or other strategic centres where there is a need for greater entertainment, cultural and creative offerings.

The use of floor space bonuses to achieve community benefits has been utilised by Randwick City for a number of years for large redevelopment sites such within Kensington and Kingsford town centres. Large strategic node sites within these centres are encouraged to provide an additional 200m<sup>2</sup> for the purposes of innovation and/or multi purpose space which is not included in the gross floor area calculation. To date these provisions have resulted in the dedication via planning agreements of 2 separate innovation/ multi functional creative space with more in the pipeline. These vital spaces will help fill the deficit in affordable creative space provision that has been highlighted as a critical issue affecting the sustainability of the creative sectors.

Council is supportive of the proposed provision, noting that it is an optional clause with councils able to determine its applicability to their local context. It is important to note however, that there needs to be greater certainty within the legislation that the floor area bonus would be maintained for the specified use as intended. For instance, there should be a provision to preclude the conversion of the floor space to another use for a period of time, similar to the affordable housing FSR bonus provisions under the Housing SEPP which requires units to be maintained as affordable

housing for a period of time. Further consideration could also be given to the option of dedicating the floor space to Council as an asset and/or for management.

Thank you for the opportunity to comment on the proposed amendments to support the live music and creative sectors. Council is supportive of the provisions provided they are sufficiently robust to ensure that noise and other amenity considerations capable of being managed. If you would like to discuss any issues addressed in this submission, please do not hesitate to contact Stella Agagiotis, Manager Strategic Planning on telephone 9093 6954.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Kerry Kyriacou', written in a cursive style.

**Kerry Kyriacou**  
Director City Planning